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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/481,988	01/11/2000	PAUL J. BRUINSMA	1941-70	6422

20575 7590 06/25/2003
MARGER JOHNSON & MCCOLLOM PC
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PORTLAND, OR 97205

EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 06/25/2003

35

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-35

Office Action Summary	Application No.	Applicant(s)	
	09/481,988	BRUINSMA ET AL.	
	Examiner	Art Unit	
	Paul Marcantoni	1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 129-188 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 129-188 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

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The reopening of prosecution was deemed necessary for the reasons to follow. ~~Further~~ Further, the allowability of claims 129-187 has been withdrawn until applicants satisfy the conditions required below prior to allowability of these claims. Also, claim 188 is now rejected for the same reasons that previous product claims were rejected in applicants' attempts to have product claims added. No product claims will be allowed for the reasons cited below and those cited in previous office actions. It is respectfully requested that applicants refrain from presenting any further product claims because they cannot and will not be allowed as part of this or any re-issue application wherein they are being recaptured.

Improper Presentation (Again) of Product Claims:

Claim 188 is rejected under 35 USC 251 as being an improper recapture of the claimed subject matter deliberately canceled in the application for the patent upon which the present re-issue is based and a reissue applicant's failure to file a divisional application is not considered to be an error causing a patent granted on elected claims to be partially inoperative by reason of claiming less than the applicant had a right to claim. Thus, such error is not correctable by re-issue of the original patent under 35 USC 251. In re Watkinson, 900 F2d 230, 14 USPQ2d 1407 (Fed Cir. 1990); In re Orita, 550 F2d 1277, 1280, 193 USPQ 145, 148 (CCPA 1977) See also In re Mead, 581 F2d 251, 198 USPQ 412 (CCPA 1978). See MPEP 1450-51. Cancellation of claim 188 is thus requested.

Improper Amendment submitted 4/14/03 adding new claims 129-188

The amendment submitted April 14, 2003 is not in accordance with 37 CFR 1.173 (d). Specifically, the newly presented claims have not been underlined in their entirety. All markings should be done relative to the claims in the patent. Please see MPEP 1453. Also, note that 37 CFR 1.173 (c) requires that whenever there is an amendment to the claims, there must also be supplied, on pages separate from the pages containing the changes, an explanation of the support in the disclosure of the patent for the changes made to the claims. Applicants can resolve this easily for all original claims by identifying which claim corresponds to the original claims and further for the new claims to explain where they derive support for these new claims from their original disclosure. This has been requested to ascertain that applicants have complied with rule 37 CFR 1.173 (c).

Supplemental Reissue Oath/Declaration Required:

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed. (See also MPEP 1444 and 1414.01)

Claims 129-188 are rejected as being based upon a defective reissue oath or declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth as follows: The applicants' claims have been amended significantly and the errors that applicant relied upon in the original reissue oath/declaration are no longer applicable to the present claims. The applicants are respectfully requested to present a

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new oath/declaration recites the appropriate error(s) which are being corrected. (See MPEP 1414).

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

Consent of Assignee for Re-issue:

This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

Missing Information Disclosure Statement:

All references cited in the original patent must be cited in the re-issue application. It is respectfully requested applicants provide a proper information disclosure statement listing all the references cited in the original patent (as well as any others they are aware of) for consideration by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is (703)-308-

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1196. If attempts to reach the examiner by telephone are unsuccessful, the applicants may also consider contacting the Special Programs Examiner, Christine Skane Tierney at (703) 308-2526.

The fax phone numbers for the organization where this application or proceeding is assigned (ie Tech Center 1700) are (703)-872-9310 for regular communications and (703)-872-9311 for After Final communications.

A handwritten signature in black ink, appearing to read "Paul Marcantoni", with a stylized flourish at the end.

Paul Marcantoni
Primary Examiner
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